

REMARKS

Claims 37-39 are pending.

Claims 37-39 are rejected.

Claim 37 is amended.

Applicants request reconsideration of claims 37-39.

The Examiner objected to the specification and rejected the claims. Applicants address each point separately below.

I. Objection to the Specification

The Examiner objected to the Specification, arguing that it failed to provide antecedent basis for the “claimed limitation” of an “atmosphere.” (Office Action dated 3/29/04 at p. 2.) Applicants first note that the term “atmosphere” appears in the preamble of claim 37 rather than in its body as a limitation. Applicants also note that the specification need not include information that would be readily understood. (*Verve LLC v. Crane Cams Inc.*, 311 F.3d 1116, 65 U.S.P.Q.2d 1051, 1053-54 (Fed. Cir. 2002).) Applicants submit that the term “atmosphere” would be readily understood given its plain meaning.

The Examiner cited section 608.01(o) of the MPEP as authority for requiring correction. That section expresses that “applicant is not limited to the nomenclature used in the application as filed” but suggests amending the specification when that nomenclature is departed from by amendment of the claims. Such is not the case here, though. Applicants note that claim 37 is an original claim that has included the term “atmosphere” as early as the filing date of the parent application – U.S. App. Ser. No. 09/249,478, filed February 12, 1999. Because original claims are part of the written description (*In re Gardner*, 480 F.2d 879, 178 U.S.P.Q. 149, 149 (C.C.P.A. 1973)), claim 37 as first presented did not deviate from the nomenclature used in the application as filed, nor have any amendments departed from that nomenclature. Applicants further note that the Examiner’s adoption of Applicants’ position would have the added benefit of maintaining consistency with the Examiner’s previous position, wherein the Examiner allowed the parent application to issue as U.S. Pat. No. 6,291,341 with claim 9 referring to an “atmosphere” in its body.

Nevertheless, in the interest of focusing on prior art rejections for the remainder of prosecution, Applicants have amended the Specification by including the language of original claim 37 as paragraph [0014.5] -- part of the Summary of the Invention.

II. Rejection of claims.

The Examiner rejected claims 37-39 as being anticipated by U.S. Pat. No. 6,294,466 by Chang. Applicants contend the claims have been clarified to better highlight their distinction from Chang's disclosure. Specifically, independent claim 37 has been clarified to require a chemically inert reactivity increaser. That clarification applies to dependent claims 38-39 accordingly. Non-limiting support in the Specification comes from its references to properties concerning an ability to promote reaction (¶42) as well as properties involving increased reaction rate or reactivity (¶¶14, 36). Paragraph 44 further addresses a property involving an increase in the rate of reaction of a process. Paragraph 31 provides a more specific (yet still non-limiting) example in addressing argon's promotion of stronger reactivity.

Chang addresses argon in circumstances wherein alternate properties are in effect. Specifically, Chang's argon serves to act as a carrier (col. 3, ln. 43; col. 11, ln. 33) or a pressure stabilizer (col. 10, ln. 3-11). Chang further suggests a circumstance where argon exhibits the exact opposite to the "reactability increaser" property of the clarified claims. Significantly, Chang identifies argon as an inert gas (col. 3, ln. 43; col. 10, ln. 3; col. 11, ln. 33) and expresses that inert gas has a diluent property (col. 1, ln. 41). Thus, having disclosed only alternative properties -- including the exact opposite to the claimed property, Chang cannot be interpreted as anticipating the claims.

Moreover, because the clarification is directed to a physical property, Applicants contend it is a proper limitation for a non-method claim, thereby deserving patentable weight. As a result, the Examiner's statements concerning Chang's disclosure of method limitations and product by process tenets are not applicable. Nevertheless, in the interest of avoiding misinterpretation issues suffered during prosecution of related applications (*see, e.g.*, Appeal Brief at p. 5-7 for U.S. App. Ser. No. 09/825,612; Appeal Brief at p. 7 for U.S. App. Ser. No. 09/825,613), Applicants note at least one instance wherein the Examiner's citation to Chang fails to support the Examiner's argument. Specifically, the Examiner cites Chang's col. 12, ln. 15-33

as disclosing a step of increasing chemical reactivity of a deposition gas. (Office Action dated 3/29/04 at p. 3) However, a careful reading of that excerpt demonstrates that it merely addresses bifurcating the flows of different gases in order to avoid unwanted deposition and the problems stemming therefrom.

CONCLUSION

In light of the above amendments and remarks, Applicants submit that the Specification adequately supports claims 37-39, which are allowable over the applied reference. Therefore, Applicants respectfully request reconsideration of the Examiner's objection and rejections and further requests allowance of all of the pending claims. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact Applicants' undersigned attorney at the number indicated.

Respectfully submitted,



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Charles Brantley
Registration No. 38,086
Micron Technology, Inc.
8000 S. Federal Way
Boise, ID 83716-9632
(208) 368-4557

Attorney for Applicants